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### **[Review of] Nicola Lacey, In Search of Criminal Responsibility: Ideas, Interests, and Institutions**

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**Nicola Lacey, IN SEARCH OF CRIMINAL RESPONSIBILITY: IDEAS, INTERESTS, AND INSTITUTIONS**

Oxford: Oxford University Press (<http://global.oup.com>), 2016. Xviii+237 pp. ISBN 9780199248209. £75.00

This volume is the culmination of several years' engagement by one of today's leading scholars with perhaps the foremost issue in criminal law: what makes someone responsible for a crime and therefore liable to punishment? Writ small, Lacey's thesis is that responsibility serves to legitimate the criminal law and to facilitate its coordination of social behaviour. She argues that these two core functions pose different challenges and engender divergent responses in different times and places. In other words, responsibility has no metaphysical essence that can be captured; as a concept, it is rooted in historical and cultural specificities. By advancing these arguments, Lacey aims to provide a counternarrative to what she perceives to be the dominant voice in debates over criminal responsibility: that of legal and moral philosophers. The fact that fewer publications adopting this philosophical approach are cited than those adopting the interdisciplinary, historical approach Lacey advocates (10-11) throws some doubt on this perception, but it also testifies to the impact her work has had on the field.

In the first three substantive chapters of the book, Lacey chronicles the development of criminal responsibility within English law from the eighteenth century through to the present. She structures her narrative around four conceptions of responsibility – capacity, character, outcome and risk – taking account of the three forces she considers to have most powerfully shaped the patterns and practices of responsibility attribution: ideas, interests and institutions. She provides case studies to illustrate each of these influences, postulating connections between the composition of responsibility and shifts in prevailing political, economic and social conditions. Restricting her analysis in this way serves to contain what is a formidably ambitious undertaking. Her selection of ideas and interests also serves to narrow the focus. In the chapter dedicated to ideas, Lacey hones in on conceptions of the self and human nature, the growth of psychological and social sciences, the emergence of Utilitarianism, the relationship between the individual and the state and gender. With approximately a page dedicated to each theme, these developments are sketched with necessarily broad strokes. Similarly, the chapter on interests provides a brief overview of the economic, professional, political and cultural or symbolic powers that Lacey deems most salient.

In the various case studies, and in chapter five, Lacey maps out the trajectory of criminal responsibility from character, which forms a spectrum from treating conduct as evidence of character through to asking whether it expresses a settled disposition, to capacity, which prioritises a defendant's choices and opportunities. The outcome and risk paradigms of responsibility are relatively modern, the former emerging in the nineteenth century with the regulatory state (and again with the mid-twentieth century welfare state) and the latter arising alongside the heightened sense of insecurity that is characteristic of the late twentieth and early twenty-first century. As Lacey makes clear, these responsibility types often co-exist and overlap, forming distinctive conglomerations. For example, in Lacey's view, English law currently favours a

combination of character and risk responsibility, which has been used to target terrorist suspects, migrants and asylum seekers in response to a crisis of security.

Detailing these historical changes is a significant contribution to knowledge (though they will be familiar to those already versed in Lacey's former work), and the book's explanatory aspirations distinguish it further still. Lacey is to be applauded for offering an explanation of these developments, and for confronting some of the methodological challenges this involves. She is quite open about the "speculative" (24) dimension to her interpretation but a little more clarity about the nature of the relationship she envisages between legal practices and their contextual environs would have been welcome. In her discussion of the criticisms leveled at interests-based historical explanations, Lacey recognises that these are "real difficulties" but suggests they have occasioned "significant over-reaction" (81). One way to overcome these difficulties, she suggests, is to be alert to the way that interests are mediated by institutional structures and realised and rationalised in terms of ideas. This, she argues, can help avoid reductivism. However, she has less to say about how to overcome the kinds of "rather vague assertion[s] of the way in which 'material forces' are 'reflected' in the structures of allegedly superstructural phenomena" (81). Lacey's own expressions of choice are "influenced" and "shaped by" but, without further elaboration, it is not clear whether, and if so how, these are any less problematic.

In the penultimate chapter of the book, Lacey makes a convincing case for extending her multidisciplinary, historically-informed approach into the realm of special jurisprudence (the analysis of legal concepts) and general jurisprudence (the theorisation of law itself). In her view, it is essential for any jurisprudential project that purports to be in any sense a theory *of* law to appreciate the social existence of law as it really is. Theorists with normative ambitions must also, she argues, be concerned with the conditions in which the principles and values they espouse are likely to survive. All of this is very convincing but several questions remain to be answered. Just how much generality can this kind of analysis provide whilst remaining meaningful (a reasonable amount, Lacey ventures (190))? And what is the appropriate division of labour? To Lacey, "philosophy, history, law and the social sciences can be understood as making complementary contributions to the general project of social theory" (204). Accordingly, hers is not "historical scholarship, but...draws on historical research to drive its interpretive project" (12). But can reliance on secondary historical research really serve this kind of project well? Might an historian, well-appraised of the jurisprudential and normative issues at stake, not uncover a significantly different story that alters the interpretive picture? Questions such as these merely underscore how rich and provocative this book is: it is essential reading for anyone with an interest in criminal law, legal theory, legal history and/or social theory.

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